

Public Law 94-400
94th Congress

An Act

To authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton Dam a feature of the Teton Basin Federal reclamation project in Idaho, and for other purposes.

Sept. 7, 1976
[S. 3542]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that without regard to the proximate cause of the failure of the Teton Dam, it is the purpose of the United States to fully compensate any and all persons, for the losses sustained by reason of the failure of said dam. The purposes of this Act are (1) to provide just compensation for the deaths, personal injuries and losses of property, including the destruction and damage to irrigation works, resulting from the failure on June 5, 1976, of the Teton Dam in the State of Idaho, and (2) to provide for the expeditious consideration and settlement of claims for such deaths, personal injuries, and property losses.

Teton Dam,
Idaho.
Damages,
compensation.

SEC. 2. All persons who suffered death, personal injury, or loss of property directly resulting from the failure on June 5, 1976, of the Teton Dam of the Lower Teton Division of the Teton Basin Federal reclamation project which was authorized to be constructed by the Act of September 7, 1964 (78 Stat. 925) shall be entitled to receive from the United States full compensation for such death, personal injury, or loss of property. Claimants shall submit their claims in writing to the Secretary, under such regulations as he prescribes, within two years after the date on which the regulations required by section 5 are published in the Federal Register. Claims based on death shall be submitted only by duly authorized legal representatives.

Casualty or
property losses,
claims.

43 USC 616nn.

SEC. 3. (a) The Secretary of the Interior, or his designee for the purpose, acting on behalf of the United States, is hereby authorized to and shall investigate, consider, ascertain, adjust, determine, and settle any claim for money damages asserted under section 2. Except as otherwise provided herein, the laws of the State of Idaho shall apply: *Provided*, That determinations, awards, and settlements under this Act shall be limited to actual or compensatory damages measured by the pecuniary injuries or loss involved and shall not include interest prior to settlement or punitive damages.

(b) In determining the amount to be awarded under this Act the Secretary shall reduce any such amount by an amount equal to the total of insurance benefits (except life insurance benefits) or other payments or settlements of any nature previously paid with respect to such death claims, personal injury, or property loss.

(c) Payments approved by the Secretary under this Act on death, personal injury, and property loss claims, shall not be subject to insurance subrogation claims in any respect under this Act but without prejudice under other laws as provided in subsection (f).

(d) The Secretary shall not include in an award any amount for reimbursement to any insurance fund for loss payments made by such company or fund.

(e) Except as to the United States, no claim cognizable under this Act shall be assigned or transferred.

(f) The acceptance by the claimant of any award, compromise, or settlement under this Act, except an advance or partial payment made under section 4(c), shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States by reason of the same subject matter. A release shall not, however, prevent an insurer with rights as a subrogee under its own name or that of the claimant from exercising any right of action against the United States to which it may be entitled under any other laws for payments made to the claimant for a loss arising from the subject matter.

(g) Any claim for damages which may be payable in whole or in part by a claimant's insurer, shall not be paid by the Secretary unless and until the claimant provides written proof that the insurer has denied the claim or has failed to approve or deny such claim within six months of its presentation, and the claimant assigns to the United States his rights against the insurer with respect to such claim. Upon the acceptance of any payment or settlement under this Act, the claimant shall assign to the United States any rights of action he has or may have against any other third party, including an insurer.

SEC. 4. (a) In the determination and settlement of claims asserted under this Act, the Secretary shall limit himself to the determination of—

(1) whether the losses sustained directly resulted from the failure of the Teton Dam on June 5, 1976;

(2) the amounts to be allowed and paid pursuant to this Act; and

(3) the persons entitled to receive the same.

(b) The Secretary shall determine and fix the amount of awards, if any, in each claim within twelve months from the date on which the claim was submitted.

Advance or
partial payments.

(c) At the request of a claimant, the Secretary is authorized to make advance or partial payments prior to final settlement of a claim, including final settlement on any portion or aspect of a claim determined to be logically severable. Such advance or partial payments shall be made available under regulations promulgated by the Secretary under section 5, which regulations shall include, but not be limited to, provisions for such payments where the Secretary determines that to delay payment until final settlement of the claim would impose a substantial hardship on such claimant. When a claimant pursues a remedy as provided for in section 9 of this Act, he shall be permitted to retain such advance or partial payments under a final court decision on the merits.

(d) Payments may be made for compensation for direct investments made in on-farm structural facilities in anticipation of service from the Teton Reservoir to the extent that such facilities are unuseable or are diminished in value by the denial of such service.

Regulations;
publication in
Federal Register.

SEC. 5. Notwithstanding any other provision of law, the Secretary shall within fifteen days after the enactment of this Act promulgate and publish in the Federal Register, final regulations and procedures for the handling of the claims authorized in section 2 of this Act. The Secretary shall also cause to be published, in newspapers with general circulation in the State of Idaho, an explanation of the rights conferred by this Act and the procedural and other requirements imposed by the rules of procedure promulgated by him. Such explanation shall be in clear, concise, and easily understandable language. In addition, the Secretary shall also disseminate such explanation con-

Publication in
newspaper.

cerning such rights and procedures, and other data helpful to claimants, in the State of Idaho, by means of brochures, pamphlets, radio, television, and other media likely to reach prospective claimants.

SEC. 6. The claims program established by this Act shall, to the extent practicable, be coordinated with other disaster relief operations conducted by other Federal agencies under the Disaster Relief Act of 1974 (42 U.S.C. 5121) and other provisions of law. The Secretary shall consult with the heads of such other Federal agencies, and shall, as he deems necessary, consistent with the expeditious determination of claims hereunder, make use of information developed by such agencies. The heads of all other Federal agencies performing disaster relief functions under the Disaster Relief Act of 1974 and other Federal authorities are hereby authorized and directed to provide the Secretary, or his designee, such information and records as the Secretary or his designee shall deem necessary for the administration of this Act.

Consultation.

SEC. 7. In order to expedite the repair and restoration of irrigation facilities damaged as a direct result of the failure of the Teton Dam, the Secretary is authorized and directed to enter into agreements with the owners of such facilities to finance the repair or reconstruction thereof, to the standards and conditions existing immediately prior to the failure of Teton Dam, either by direct payment or through construction contracts administered by the Bureau of Reclamation to the extent the cost of repairs or construction are not covered by insurance. The cost of such repairs or reconstruction shall be non-reimbursable.

Teton Dam
facilities, repair
or reconstruction.
Financial
agreement.

SEC. 8. At the end of the year following approval of this Act and each year thereafter until the completion of the claims program, the Secretary shall make an annual report to the Congress of all claims submitted to him under this Act stating the name of each claimant, the amount claimed, a brief description of the claim, and the status or disposition of the claim including the amount of each administrative payment and award under the Act.

Report to
Congress.

SEC. 9. (a) An action shall not be instituted in any court of the United States upon a claim against the United States which is included in a claim submitted under this Act until the Secretary or his designee has made a final disposition of the pending claim. A pending claim may be withdrawn from consideration prior to final decision upon fifteen days written notice, and such withdrawal shall be deemed an abandonment of the claim for all purposes under this Act. After withdrawal of a claim or after the final decision of the Secretary or his designee on a claim under this Act, a claimant may elect to assert said claim or institute an action thereon against the United States in any court of competent jurisdiction under any other provision of applicable law, and upon such election there shall be no further consideration or proceedings on the claim under this Act.

Court action.

Claim
withdrawal,
notice.

(b) Any claimant aggrieved by a final decision of the Secretary under this Act may file within sixty days from the date of such decision with the United States District Court for the District of Idaho a petition praying that such decision be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The filing of such an appeal shall constitute an election of remedies. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

Petition.

(c) Except to the extent otherwise herein provided, nothing in this Act shall be construed to prevent any claimant under this Act from exercising any rights to which he may be entitled under any other provisions of law.

Fees.

(d) Attorney and agent fees shall be paid out of the awards hereunder. No attorney or agent on account of services rendered in connection with each claim shall receive in excess of 10 per centum of the amount paid in connection therewith, any contract to the contrary notwithstanding. Whoever violates this subsection shall be fined a sum not to exceed \$10,000.

Penalty.**"Persons."**

SEC. 10. For the purposes of this Act, the term "persons" means any individual, Indian, Indian tribe, corporation, partnership, company, municipality, township, association or other non-Federal entity.

SEC. 11. If any particular provision of this Act or the application thereof to any person or circumstance, is held invalid, the other provisions of this Act shall not be affected thereby.

Appropriation authorization.

SEC. 12. There are hereby authorized to be appropriated such funds as may be required to carry out the purposes of this Act.

Approved September 7, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1423 (Comm. on the Judiciary).

SENATE REPORT No. 94-963 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 122 (1976):

June 17, considered and passed Senate.

Aug. 24, considered and passed House, amended.

Aug. 25, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 37:

Sept. 7, Presidential statement.